In the

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 16,536

THOMAS GUY BROWN,

Appellant,

v.

UNITED STATES OF AMERICA,

Appellee.

MOTION FOR REHEARING

U. S. COURT OF APPEALS
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TO THE HONORABLE COURT OF APPEALS:

Appellant presents this petition for rehearing in this cause and respectfully shows:

1.

This Court erred in holding that Sec. 353(b) (1) providing:

> "A drug intended for use by man which—
> (b) is not safe for use except under the su-

> pervision of a practitioner licensed by law to administer such drugs;
>
> shall be dispensed only (i) upon a written prescription of a practitioner licensed by law to administer such drug, or (ii) upon an oral prescription by such practitioner which is reduced promptly to writing and filled by the pharmacist, or (iii) by refilling any such written or oral prescription . . . filed by the pharmacist . . . "

makes unlawful a physician's act in delivering, administering or dispensing a quantity of harmful drugs.

2.

The Court erred in finding the statute broad enough to include a physician's administering or dispensing harmful drugs because Sections (b) and (c) recognize the right in this language:

> ". . . is not safe for use except under the supervision of a practitioner licensed by law to administer such drugs;"

3.

The Court erred in finding Subsections (i) (ii) and (iii) of the section apply to a physician's act in dispensing or administering drugs when the context of those subsections leaves no uncertainty but that they regulate pharmacists.

4.

In construing the 1951 Amendment to the Pure Food and Drug Act, the Court erred when it refused to consider the Congressional intention, as expressed

in the committee reports, to regulate pharmacists.

5.

The Court erred in judicially enlarging the Pure Food and Drug Act by reading into its provisions: "In the course of his professional practice only."

6.

The Court erred in attributing to the word "prescription" a meaning foreign to its ordinary meaning.

For the reasons stated, appellant requests that a rehearing be granted, and that on such rehearing the judgment of the Court be reversed.

Dated January 22, 1958.

Respectfully submitted,

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Ben P. Monning Jr

Of Counsel

Thomas Guy Brown, appellant herein by his attorney hereto, certifies that the foregoing petition is not presented for the purpose of delay or vexation, but is in the opinion of counsel well founded in law and proper to be filed herein.

Dated January 22, 1958.

Ben P. Monning Jr

BEN MONNING, JR.,
Attorney for Appellant.